

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Keith S. Morris,

Plaintiff,

Hon. Hugh B. Scott

04CV17A

v.

Decision & Order

New York State Department
of Correctional Services, et al.,

Defendants.

Before the Court are various discovery motions (Docket Nos. 24, 25 and 29).

The plaintiff, Keith S. Morris, commenced this action alleging that his rights under 42 U.S.C. § 1983 were violated when he was allegedly assaulted at the Attica Correctional Facility by correctional officers on January 3, 2001.

The plaintiff seeks to compel the defendants to produce his medical records from Metropolitan Hospital in New York City. (Docket No. 24). The plaintiff has filed a similar motion previously in this case. Neither the Metropolitan Hospital, nor its custodian of records, are parties to this action. The documents the plaintiff seeks are not in the possession, control or custody of the defendants. The defendants assert that the motion is not properly directed at the defendants. The Court agrees. If the plaintiff desires to obtain these documents he must do so directly from Metropolitan Hospital. The motion to compel the defendants to produce records from Metropolitan Hospital is denied.

The remaining motions (Docket Nos. 25 and 29) seek documents from the defendants. In both instances, however, it appears that the plaintiff has not made an initial request of the defendants for the sought after documents by way of a discovery request. Instead, in each instance the plaintiff has directly filed a motion to compel the discovery he seeks. The Court cannot grant a motion to compel discovery where no demand for that discovery had properly ever been served upon the party from whom the discovery is sought. In the future, the plaintiff is instructed that prior to filing a motion to compel, he must first serve a discovery request for that information upon the defendants pursuant to the Federal Rules of Civil Procedure.

Notwithstanding the above, the defendants have represented that they will treat the instant motions as discovery requests and will respond. In Docket No. 25, Morris seeks to compel the defendants to produce his medical records from the Attica Correctional Facility. As noted above, the defendants assert that the plaintiff has never served a document demand requesting these records. However, the defendants have represented that they will produce the records. To expedite this matter the defendants are directed to produce the records within 30 days of the date of this Order.

In Docket No. 29, the plaintiff seeks a copy of the Inspector General's Office's investigation into his January 2001 complaint. Once again, the defendants note that the plaintiff has not previously requested this report in any discovery request. In any event, the defendants have represented that they will treat the motion as a discovery request. The defendants shall review the requested document and respond to the request within 30 days.¹

¹ The defendants have represented that it is their intention to review the Inspector General's report to determine whether to object to disclosure, to allow disclosure or to request an *in camera* review.

In addition, counsel for the defendants notes that the plaintiff continues to attempt to serve him by sending copies of papers to Albany, New York. To the extent that the plaintiff seeks to serve papers upon the defendants in this case, the plaintiff is directed to forward all such papers to defendants' counsel, Darren Longo, Esq., Assistant Attorney General, New York State Office of the Attorney General, 107 Delaware Avenue, Buffalo, New York 14202.

Consistent with the above, the plaintiff's motion to compel defendants to produce records from the Metropolitan Hospital (Docket No. 24) is denied; plaintiff's motion to compel records from the Attica Correctional Facility and plaintiff's motion to compel disclosure of the Inspector General's investigation (Docket No. 29) are denied as premature.

So Ordered.

/s/ Hugh B. Scott

United States Magistrate Judge
Western District of New York

Buffalo, New York
July 21, 2006